

Against this background the obviousness or non obviousness of the subject matter is determined.

1. Determining the scope and contents of the prior art.

Applicants agree that Kendig teaches a heat-shrinkable heat sealable multilayer polymeric film that is biaxially oriented and exhibits film shrinkage at 100° C of approximately 5% to 55%, and that such film is useful in packaging for both non-cook and cook-in applications. However as the Examiner states there is nothing in Kendig suggesting separation means to remove a section of the film wrap.

Applicants understand Meilhon to teach a shrinkable film that has a preferred direction of tearing **D** substantially perpendicular to the direction of extrusion **E** which is the same as the winding direction of the film over the articles it is intended to wrap. (Column 3 lines 23-28 and figure 1) According to Meilhon, there is provided a series of rather specifically aligned perforations perpendicular to the preferred direction of tearing of the film forming a weakened zone of perforations **A**. The perforations provide a zone **A** that is easily punctured at any point (as by a person's thumb) to create a starting point for tearing the film along the preferred direction of tearing **D**. The spacing of the perforations determines the width of the tear strip **K** as shown in figure 2. See column 4 lines 43-65 and more particularly lines 51-62 which describe the function of the weakened zone **A** and tear zone **K** as follows:

"The edge of the tongue corresponding to the central line 7 will be cut off. It is then sufficient to grasp this edge and to pull the tongue J in the direction of the arrow T1 or T2, that is to say along the preferred direction D of tearing, perpendicularly to the lines of perforations 7, 9, 10 to effect the opening by cutting, in the film 3, of a strip K, the width of which corresponds to that of the tongue J. The traction on the tongue J is thus exerted in a direction transverse, advantageously perpendicular, to the direction of the zone of weakening A forming a band, and not in the direction of this zone A put into concrete form by the lines of perforations 7, 9, 10."

2. Ascertaining the differences between the prior art and the claims at issue.

Independent claim 1 reads:

"An open-ended tube comprising walls of a heat-sealable multi-layer polymeric film, wherein said film comprises an outer shrinkable substrate layer and an inner heat-sealable layer, wherein said substrate layer has a degree of shrinkage in a longitudinal dimension of the tube of about 0% to about 50% when heated from ambient temperature to a temperature in the range of 55 to 100°C, and a degree of shrinkage in a transverse dimension of the tube of about 5 to about 70% when heated from ambient temperature to a temperature in the range of 55 to 100°C, wherein said multi-layer film comprises a plurality of separating means which enable one multi-layer portion of said film to be separated from an adjacent multi-layer portion of said film". (Emphasis added)

The question is what are the plurality of separating means which enable one multilayer portion of said film to be separated from an adjacent multilayer portion of said film. This is a "means for" clause that must be interpreted in accordance with the specification content, to determine whether such enabling means are similar or different from the means disclosed in Meilhon. The present specification describes the plurality of separating means in [0016] page 2

as a set of longitudinal perforations running along the tube axis forming two spaced parallel tearable strips that when both are removed separate the tube into two sections, a lid section that remains adhered to the container, and a disposable section that may be discarded. ([0022] page 2).

Thus the film and the claimed plurality of separating means are substantially different from the perforation zone **A** illustrated in Meilhon or the preferential tearing direction **D**. The film claimed and the film shown in Kendig do not exhibit a preferred tearing direction that can be used to advantage, so that inclusion of the perforations of Meilhon to the film of Kendig would not result in "separating means" as claimed.

The "separating means" in Meilhon are inherent in the structure of the film and are aided by the addition of strategically placed perforations aligned orthogonally to the tearing zones that are designed to create tongs for use with the tearing zones rather than form the tearing zones claimed. It is clear that only localized perforation but no lengthwise separation of the film occurs along zone **A** in Meilhon, that is the film separation does not occur along **A** but perpendicularly to it. To the contrary, the claimed invention requires separation along the perforation zone, not orthogonally to it.

Therefore, the invention as claimed requires two, substantially parallel, perforated spaced tearing zones within the context of the meaning of the term "a plurality of separating means" within the context of the specification in order to separate the film into two pieces, while Meilhon only needs one inherent tearing zone. But of course the ultimate objective of the two inventions is different; Meilhon separates a portion of packaged goods from the package while the present invention separates a defined width of the film forming part of the package structure, i.e. the lid from the rest of the film forming the no longer needed wrapper or bag containing the ovenable food package.

3. Resolving the level of ordinary skill in the art.

This is indeed a difficult issue. However based on the disclosures one would expect the artisan to be aware of numerous polyester films useable for heat shrinking applications. One would also reasonable expect such artisan to know to place heat sealing coatings on such films. From the teachings of Meilhon an artisan would also know that there are films that exhibit preferential tearing characteristics which have been used to separate shrink wrapped products by tearing the shrink wrap film along the preferential tearing direction. The reasonable artisan would also conclude that the selection of films with a preferred tear direction inherent in the film itself indicate that tearing along a perforation zone such as shown in Meilhon, is unlikely.

4. Evaluating evidence of secondary consideration.

While no extraneous evidence of secondary considerations has been offered the record itself tends to support that such film structure as claimed is unobvious, in view of the fact that shrink-wrapping and heat sealing of packages has been known at least since 1998 (Meilhon) and in 2000 Kendig does not claim a film incorporating Meilhon as the Examiner believes reasonable. The fact that it took another couple of years in a highly competitive field such as ovenable food packaging films, for the present invention to provide an advantageous cost reduction in food packaging materials is worth noting.

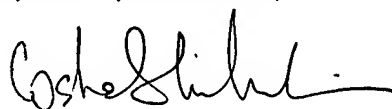
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Conclusion.

Because there are substantial differences between the applied art and the invention as claimed, particularly the teachings of the secondary reference Meilhon, Applicants believe that an analysis under *Graham v. John Deere Co.* as given above fails to support a finding of obviousness. Reconsideration and allowance of all pending claims is, therefore, earnestly solicited.

Respectfully submitted,



Costas S. Krikelis, Reg. No. 28,028
Attorney for Applicant

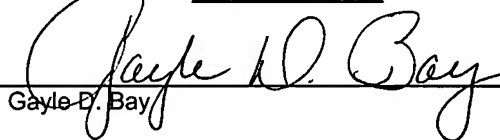
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P.O. Box 1596 Wilmington, DE 19899 (302) 778-2500

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Gayle D. Bay